

-Remarks-

The 35 U.S.C. §102(b) rejection.

Claims 1-7, 10, 14 and 16-21 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,857,938 (hereinafter referred to as "Wahl"). Applicants respectfully traverse.

Wahl discloses an apparatus for dispensing measured quantities of powder (see column 16, lines 2-3). The apparatus is set forth in its entirety on Sheet 1 of the drawings of Wahl. Key features of the Wahl apparatus include:

- a base (10)
- a superstructure (11) "secured rigidly to a vibration-producing member by a plate (13)"
- a vibration-producing device (12)
- a bottle (21)
- a conveyor belt (22) which sequentially conducts a plurality of bottles to a position directly below a funnel (20) through which the powder (33) flows continuously and uniformly. The flow of powder is regulated by a slide plate (40) which closes and opens the hopper with respect to the measuring chambers.
- a crossbar (43) which controls the discharge of the powder from the measuring chamber through the funnels.

The powder begins in a hopper (30) having an inclined base (31). When the superstructure is agitated, the powder travels along the inclined base and is deposited in a measuring chamber.

It is clear from inspection of Sheet 1 of Wahl that the superstructure, which contains the hopper (30), a plurality of measuring chambers each of which carry a funnel (20) is shaken and the bottles into which the powder is dispensed are not shaken. The bottles, i.e., containers, remain stationary in waiting below the funnels for the already-measured amount of powder.

This is stated explicitly in Wahl at column 4, lines 70-72: "In operation, the bottles are stationary during the bottle filling operation..."

Instant claim 1 is directed to

A method of filling with powder a container having an open end, the method including: positioning an outlet of a hopper containing a powder above the open end of the container; mechanically agitating the hopper so as to cause powder to be transferred from the hopper to the container; and *mechanically agitating the container*, wherein the steps of mechanically agitating include tapping the hopper and/or the container by at least a predetermined amount sufficient to ensure that the container is filled with powder at a predetermined density. (emphasis provided)

Applicants submit that Wahl does not disclose "mechanically agitating the container." In fact, Wahl specifically states, at column 4, lines 70-72 that "[i]n operation, the bottles are stationary during the bottle filling operation..." Since Wahl discloses that it is vital that the bottles be stationary and since the instant claim requires that the container be agitated during filling of the container, Applicants submit that claim 1 of the instant invention is not anticipated by Wahl.

The Examiner stated that the hopper and container, as one super structure, are vibrated at the same time via electro-magnetic vibrator 12, which is cammed. The Examiner refers to Figures 24-26. Applicants submit that Figures 24 and 26 do not show the hopper and the container as being part of one super structure. As stated at column 4, lines 41-46 of the specification, Figure 24 is a top view of the timing mechanism which controls the various related operations of the machine; Figure 25 is a diagrammatic illustration showing the position of the various *timing cams* at the start of the machine operating cycle; and Figure 26 is an electrical circuit diagram of the machine. Applicants submit that there is nothing in any of Figures 24-26 of Wahl which requires or even suggests that the containers are shaken, tapped or vibrated in any way.

Further, Applicants submit that Figure 1 of Wahl clearly shows that the vibrating mechanism (12) is immovably attached to plate (16) by vibration mountings (17). The mounting plate is secured to the base member by cooperating bolts (18) and (19). Thus, the vibrating device (12) is firmly attached to the base but is not attached at all to the container. Further, the container is not attached to the superstructure which contains the above elements but is rather placed on a conveyor belt which passes below the above superstructure. Accordingly, not only is there no mention in Wahl that the container is vibrated, but, logically, the Wahl vibrating device can only vibrate the superstructure and not the container. This is further supported by the text in the specification at column 4, lines 47-75.

Accordingly, Applicants submit that claims 1-7, 10, 14 and 16-21 are not anticipated under 35 U.S.C. §102(a) by Wahl.

Applicants respectfully request that the Examiner reconsider and withdraw the 35 U.S.C. §102(b) rejection of claims 1-7, 10, 14 and 16-21.

The 35 U.S.C. §103(a) rejection.

Claims 1-21 were rejected under 35 U.S.C. §103(a) as being obvious over Wahl in view of Ede, US Patent No. 7,051,771 (hereinafter referred to as "Ede"). Specifically, the Examiner has alleged that while Wahl does not disclose the mechanical agitation being in the form of tapping, Ede discloses a powder dispensing apparatus wherein the powder is aided through the apparatus by tapping or vibrating to ensure full flow of powder. The Examiner refers to col. 9, lines 20-28 of Ede. The Examiner has alleged that it would have been obvious to one of ordinary skill in the art to modify the Wahl device to include a tapping mechanism. Applicants respectfully traverse.

Applicants submit that Ede teaches filling a container with powder by utilizing a compression technique which compresses the powder with a plunger in the container after filling. On column 9, lines 20-28, Ede contemplates that the tube may jam rather than slide forward when the plunger is pushed. In those cases, Ede states that transfer of powder could be achieved by tapping or vibrating the dosator and allowing the powder to fall under gravity.

Applicants refer the Examiner to the above section for a summary of the Wahl disclosure.

Claim 1 of the instant application requires that the **container** be mechanically agitated. This limitation is present in all of claims 1 through 21 of the instant application.

As stated above, Wahl does not disclose vibrating the container. The container in Wahl rests beneath the hopper/shaker assembly and it is the hopper/shaker assembly that is shaken. Accordingly, claims 1-21 are not obvious over Wahl alone.

Further, Applicants submit that the Ede disclosure does not remedy the deficiencies present in Wahl. That is, Ede does not disclose that the container may be tapped or vibrated. In Ede, the dosator containing the powder, which is not attached to the container, is shaken to prevent jamming of the powder flow by a cohesive powder. In the instant claims, it is required that the container be shaken. Thus, it is apparent that both Wahl and Ede suffer from the same deficiency with respect to the claims of the instant application, that is, that neither Wahl nor Ede disclose that the container into which the powder is transferred is to be vibrated, tapped or shaken in any way. Applicants submit that a combination of Wahl with Ede still results in an apparatus in which the container remains motionless during filling while the claims of the instant application require that the container be shaken. Applicants submit that claims 1-21 of the instant application are, accordingly not obvious over Wahl in view of Ede. Applicants respectfully request that the Examiner reconsider and withdraw the 35 U.S.C. §103(a) rejection of claims 1-21 over Wahl in view of Ede.

The Examiner also rejected claims 8, 9, 11-13 and 15 separately as being obvious over Wahl in view of Ede. Specifically, the Examiner has alleged that the Wahl reference discloses the invention as modified by Ede but doesn't disclose an orifice being 0.5 mm, mechanical agitation including lifting the hopper and container by 1-10 mm, tapping 50-500 times, acceleration of approximately 1000 G and vibrating at a frequency between 100 Hz and 1kHz. The Examiner has alleged that these operational sizes and ranges would have been obvious to make on the Wahl device. Applicants respectfully traverse.

Applicants submit that, for the reasons discussed above, claims 8, 9, 11-13 and 15 are not obvious over Wahl in view of Ede. Applicants submit that whether or not it would be obvious to make the optimization or operational size and range changes to Wahl in view of the teachings of Ede is not relevant because in any case, a combination of Wahl and Ede does not result in an apparatus which has or teaches or suggests a step requiring tapping the container.

Applicants submit that claims 8, 9, 11-13 and 15 of the instant application are, accordingly not obvious over Wahl in view of Ede. Applicants respectfully request that the Examiner reconsider and withdraw the 35 U.S.C. §103(a) rejection of claims 8, 9, 11-13 and 15 over Wahl in view of Ede.

-Conclusion-

Applicants, having responded to all points and concerns raised by the Examiner, believe this application to be in condition for allowance. An early and favorable action is respectfully requested.

Respectfully submitted,

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